

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2248 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

SHAILESH VINUBHAI DATANIA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR HL JANI, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 03/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 17-1-98 passed by the Police Commissioner, Ahmedabad City, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has branded the petitioner as a boot-legger within the meaning of section 2 (b) as well as dangerous person within the meaning of Section 2 (c) of the said Act and for coming to this conclusion has placed reliance on three prohibition cases registered against the petitioner and two criminal cases for the alleged offences punishable under Sections 143, 147, 149, 323, 188, 504 and 506(1) of the IPC and section 135 (1) of the Bombay Police Act. In respect of all these offences, the investigation is still in progress. Over and above these cases, further reliance is also placed on the statements of four witnesses for the incidents which took place on 24-12-97 when the witness was beaten as the petitioner demanded Rs.500/- to which demanded the petitioner did not accede and on 31-12-97 when the concerned witness was beaten on the ground that he was the informant of the police. On both the occasions many people gathered to watch the incidents and they started running helter-skelter when the petitioner rushed towards them with open knife and an atmosphere of fear and terror was created.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person and a boot-legger within the meaning of Section 2(c) and 2(b), respectively of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

On behalf of the petitioner, it was contended that even if the allegations made against the petitioner are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could

not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

This petition is also required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the petitioner are true, the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also visited. The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 17-1-98 is quashed and set aside. The detenu Shailesh Vinubhai Dataniya is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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